

BEFORE THE OREGON MORTUARY AND CEMETERY BOARD

<p>In the matter of the combined Funeral Service Practitioner and Embalmer license of</p> <p>MICHAEL DALE TERWILLIGER, CO-3650</p> <p>LICENSEE</p>	<p>FINAL ORDER ON DEFAULT (Revocation of License)</p> <p>CASE NO. 14-1004 CASE NO. 14-1011 CASE NO. 14-1018</p>
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On July 3, 2014, the Oregon Mortuary & Cemetery Board (Board) properly served a Notice of Proposed Disciplinary Action and Opportunity for a Hearing (Notice) in OMCB Case Nos. 14-1004, 14-1011, and 14-1018 to Michael Dale Terwilliger (Terwilliger) that proposed to take disciplinary action in the form of revocation of his Combined Funeral Service Practitioner and Embalmer License, OMCB License CO-3650. The Notice is attached to this Final Order and is incorporated by reference.

The Notice offered Terwilliger an opportunity for a hearing if a written request for a hearing was received by the Board within 21 days from the date the Notice was mailed. The Board mailed the Notice to the address Terwilliger provided to the Board and it has not been returned. The Board did not receive a written request for a hearing.

NOW THEREFORE, after considering the Board’s file relating to this matter, the Board enters the following Final Order on Default:

FINDINGS OF FACT

Business Operations

1. On November 26, 2013, the Board revoked the facility licenses for Twin Oaks Funeral Home and Cremation Services (Funeral Home), OMCB License FE-8508, and Twin Oaks Memorial Gardens and Mausoleum (Mausoleum), OMCB License CE-0713. This action was taken as a result of circumstances documented in Case Nos. 11-1066A and B, 12-1027A and B, 12-1037A and B, and 13-1009B and C through a Combined Final Order on Default. At the time of the license revocations, Terwilliger represented himself as the sole proprietor of the businesses.
2. Between June, 2009 and November 26, 2013, Terwilliger, as an individual, entered into five Consent Orders with the Board for previous violations of Board laws and regulations. (The Consent Orders were combined with one or both of the facilities listed in item 1. above.)
3. In January of 2014, Board staff received a complaint that Funeral Home was making disposition arrangements and the facility was advertising with an internet website. On January 6, 2014, Terwilliger told the Board (and Oregon Vial Records confirmed) that

at least 3 dispositions had occurred since the license was revoked for Funeral Home. Board staff advised Terwilliger to cease operating both Funeral Home and Mausoleum without a license, and to take down the website for the funeral establishment.

4. Terwilliger failed to respond to eight requests by Board staff for documents and information.
5. Terwilliger failed to take down the website after repeated requests by Board staff, including provision of instructions for how to cancel a website.
6. Failure to provide the Board with requested documents is a violation of OAR 830-040-0010(4). Each failure to cooperate or answer truthfully or completely inquiries regarding matters within the Board's jurisdiction is a violation of OAR 830-030-0090(5)(g). Each interference with a Board investigation is a violation of OAR 830-040-0010(5).
7. Failure to remove the website that misled consumers that Twin Oaks Funeral Home and Cremation Services was a licensed operating business is a violation of OAR 830-040-0050(2) and (4). Further, any advertisement or marketing materials which intentionally conceals or misstates a material fact is considered misrepresentation in violation of OAR 830-040-0050(5) and ORS 692.180(1)(a).
8. Operating a funeral establishment without a Board license is a violation of ORS 692.025(4)(a).

Arrangements for Decedent A

9. On January 20, 2014, a Decedent A was interred at Twin Oaks Memorial Gardens & Mausoleum.
10. Terwilliger actually performed the interment of Decedent A at Mausoleum even though the license had been previously revoked. Operating an unlicensed cemetery by performing an interment is a violation of ORS 692.275 and ORS 692.010(7)(a).

Arrangements for Decedent B

11. On May 19, 2012, the cremated remains of Decedent B were interred in Mausoleum next to her husband's remains.
12. Terwilliger failed to order and install the plaque in a timely manner, removed Decedent B's husband's plaque, and failed to replace either plaque for nearly two years. As of November 23, 2013 when the facility license had been revoked, the plaques had not yet been installed.
13. Failure to provide the last date lettering plaque for Decedent B and failure to replace the last date lettering plaque for Decedent B's husband for nearly two years is not consistent with the minimum accepted standards of the death care industry and is a violation of OAR 830-030-0090. It is also a failure to properly implement and follow through with contractual arrangements with the person with the legal right to control final disposition in violation of OAR 830-030-0090(1)(b).
14. Terwilliger told the family on May 24, 2014 that the plaques had been ordered when they had not. This action, and continuing to operate without a license, is a failure to abide by the minimum accepted standards of the death care industry in violation of OAR 830-030-0090. It is also a misrepresentation by concealing or misstating a

material fact in the conduct of doing business in violation of OAR 830-030-0100(1) and ORS 692.180(1)(a).

ULTIMATE FINDINGS

1. Terwilliger failed to provide the Board with requested documents, failed to cooperate with a Board investigation, and interfered with a Board investigation in violation of OAR 830-040-0010(4), OAR 830-030-0090(5)(g), and OAR 830-040-0010(5).
2. Terwilliger failed to cease advertising an unlicensed business and misrepresented the status of the business in violation of OAR 830-040-0050(2), OAR 830-040-0050(5), and ORS 692.180(1)(a).
3. Terwilliger operated a funeral establishment without a Board license in violation of ORS 692.025(4)(a).
4. Terwilliger failed to meet the minimum accepted standards of the death care industry for Decedent A in violation of OAR 830-030-0090 and failed to properly implement and follow through with contractual arrangements with the person with the legal right to control final disposition in violation of OAR 830-030-0090(1)(b).
5. Terwilliger operated an unlicensed cemetery by performing at least one interment in violation of ORS 692.275 and ORS 692.010(7)(a).
6. Terwilliger failed to meet the minimum accepted standards of the death care industry for Decedent B in violation of OAR 830-030-0090 and failed to properly implement and follow through with contractual arrangements with the person with the legal right to control final disposition in violation of OAR 830-030-0090(1)(b).
7. Terwilliger concealed or misstated a material fact in the conduct of doing business regarding Decedent B in violation of OAR 830-030-0100(1) and ORS 692.180(1)(a).

CONCLUSIONS OF LAW

1. Terwilliger's conduct, as described above in Sections 1 through 14, violated OAR 830-030-0090, OAR 830-030-0090(1)(b), OAR 830-030-0090(5)(g), OAR 830-030-0100(1), OAR 830-040-0010(4), OAR 830-040-0010(5), OAR 830-040-0050(2), OAR 830-040-0050(5), ORS 692.010(7)(a), ORS 692.025(4)(a), ORS 692.180(1)(a), and ORS 692.275.
2. Violations of the Board's rules is cause for disciplinary action under ORS 692.180(1)(g).
3. For the above actions, and pursuant to ORS 692.180(1)(a) and (g), a revocation of Terwilliger's license is appropriate.

ORDER

NOW THEREFORE, after considering the Board's file relating to this matter, the Board enters the following Final Order on Default:

1. For the above cumulative violations, and pursuant to ORS 692.180(1), the Board revokes Michael Dale Terwilliger's combined Funeral Service Practitioner and Embalmer License, OMCB License No. CO-3650.

2. This Final Order shall become effective when signed by the Executive Director of the Board.

Dated this 22 day of September 2014

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Michelle Gaines, Executive Director
Oregon Mortuary & Cemetery Board

Date of Mailing: September 22 2014